

Posted: 1/29/2002
3:00 p.m.

ORDER 2002-1-15

152568



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Action on IATA Agreement
Issued by the Department of Transportation
on the 29th day of January, 2002**

Application of the International Air
Transport Association for an exemption
under 49 U.S.C. 40109 from the
conditions of CAB Order 68-7-55

Served: February 1, 2002

Docket OST-2001-9575 - 3

ORDER GRANTING EXEMPTION

By application filed April 27, 2001, and amended May 15, 2001, the International Air Transport Association ("IATA") requests a partial exemption from one of the conditions the Department has imposed upon its "Procedures for the Conduct of the IATA Traffic Conferences" ("bylaws"). That condition requires IATA, through its U.S. air carrier members, to submit all traffic conference resolutions, recommended practices, and any other agreements produced by any of the traffic conferences to the Department of Transportation for individual review, approval and, if requested and granted, antitrust immunity, before they may be declared effective by the conference and implemented by its members.¹

Specifically, IATA requests an exemption from this advance approval condition to the extent necessary to permit it to adopt and implement 37 specified resolutions and recommended practices of its worldwide Passenger Services Conference (PSC), without filing for prior approval by the Department and without immunity from U.S. antitrust laws. The list of resolutions and recommended practices is specified in Appendix A of IATA's application of May 15, 2001, and in the Appendix to this order.²

¹ As IATA notes, since the U.S. first approved and immunized the IATA traffic Conference carrier coordinating system in 1946, the Civil Aeronautics Board and its successor, DOT, have enforced general procedural conditions regulating the various tariff, agency and procedures conferences. Reflecting a then-existing statutory requirement that U.S. carriers file for advance government approval every contract or agreement with another carrier affecting foreign air transportation, such a condition was expressly imposed on the bylaws. See, e.g. CAB Order E-3888, February 9, 1950. As last formulated in CAB Order 68-7-55, July 12, 1968, and reaffirmed by DOT in Order 85-5-12, condition #2 requires that "all recommended practices, agreements and resolutions adopted by IATA and each of its conferences and permanent conference committees" be submitted to the CAB/DOT for "appropriate action," which has been construed uniformly as prior review and approval before any implementation by members. The statutory filing requirement has since been made voluntary. See 49 U.S.C. 41309. Unfiled and/or unapproved agreements have no antitrust immunity.

² In the May 15 amendment to its application IATA stated that three resolutions had been included in its application in error: Resolution 729 (Interchange of On-Line Passenger Ticket), Resolution 744 (Local Baggage Committees), and Resolution 745 (Dangerous Goods in Passengers' Baggage).

In support of its application, IATA indicates that it believes that a "substantial portion" of the business of its passenger and cargo services conferences, which in main part is setting standards and developing harmonized carrier practices that support the interline system, "is competitively benign and may be carried out without immunity from U.S. antitrust laws." IATA indicates that it is ultimately willing to conduct a substantial part of its service conference activities without antitrust immunity, and therefore it seeks the ability to declare the exempted agreements effective according to its internal procedures without the necessity of DOT review. As a first step, IATA has filed the instant application covering 37 resolutions and recommended practices as a "first tranche," and plans to submit further exemption applications covering additional PSC resolutions and recommended practices in a second and third tranche. IATA also anticipates seeking a similar exemption for a specific list of resolutions/recommended practices of its Cargo Services Conference.³

IATA asks the Department to note that some of the resolutions and recommended practices in the first tranche, for which the filing exemption is requested, have been amended, while others have not. IATA anticipates that all PSC resolutions and recommended practices exempted from filing that have previously been approved and immunized would retain their immunity until they are subsequently amended and the amendments have been declared effective by IATA. At that point they would no longer have antitrust immunity or need subsequent review. Changes to other resolutions and recommended practices will continue to be filed for review and approval in the traditional way. IATA has in fact filed a package of new and amended PSC resolutions and recommended practices for approval and immunity in the normal manner, in Docket OST-2001-9583, which will be dealt with by separate order.⁴

Decision

We have decided to grant the exemption for the resolutions and recommended practices submitted by IATA in its amended application of May 15, 2001. Those exempted are listed in the Appendix to this order. We find the exemption as granted, subject to certain understandings noted below, to be in the public interest.

Our longstanding conditions have required IATA to file every change to PSC resolutions and recommended practices, whether or not their subject matter presents any policy issues. Many of these amendments involve material such as revalidations of agreements without change upon their expiry date, rescissions, and purely editorial changes. Our conditions have also prompted IATA to request immunity for every agreement filed, whether or not such agreements would present problems or raise questions under U.S. antitrust laws. While the CAB and the Department have maintained that all tariff conference actions are potentially significant and should be subject to prior oversight, the case for reviewing every agreement of the services and agency conferences is less compelling.⁵ Most of the work of the services

³ IATA is not requesting exemption from the Department's filing and prior-approval conditions as they relate to agreements of IATA's tariff or agency conferences.

⁴ Application filed April 30, 2001, requesting approval of 4 new and 26 amended resolutions and recommended practices, adopted at the 22nd IATA PSC in Vancouver, B.C., October 24-25, 2000. That application also lists, for information, an additional 13 resolutions and recommended practices covered by IATA's instant exemption application.

⁵ The CAB denied antitrust immunity to IATA agency conferences affecting carrier-agent relations within the U.S. in 1981, and U.S. carriers are prohibited from participating in agreements fixing or recommending travel agent commissions paid by airlines, even outside the U.S. IATA's non-U.S. agency conference agreements, therefore, normally present no controversial issues for U.S. authorities.

conferences involves technical standards and procedures, and seldom raises public interest issues. The Air Transport Association of America (ATA) has conducted similar work for decades without the benefit of government approval of antitrust immunity. Yet our blanket filing/approval conditions, which apply equally to all the IATA's traffic conferences activities, has forced a time-consuming Department review of many changes of little or no regulatory interest. The process often delays implementation by IATA of more efficient industry procedures that have no negative impact on competition or consumers. IATA has made an extensive study of its activities relative to its members' needs, and concluded that it no longer needs to seek antitrust immunity for many of the trade association and interline facilitation actions which it automatically sought when forced to submit agreements for prior U.S. approval.

In recent years, the Department and IATA have had informal discussions of ways in which the need for regulatory review could be reduced by identifying types of agreements which IATA would be willing to implement without antitrust immunity, if the Department modified the filing requirement. Progress has been made in this area. In particular, IATA has accepted the decision of the Department to terminate the antitrust immunity traditionally given to IATA's Articles of Association.⁶ The Articles are an agreement that governs IATA membership requirements, organization, and general functions that are separate from the Traffic Conference system governed by the "bylaws". IATA now operates as a trade association without U.S. antitrust immunity, except where specifically granted to conferences through approval of the bylaws. IATA's application for an exemption from review of certain types of conference agreements is another step in a mutual effort to reduce unnecessary government oversight.

The resolutions and recommended practices for which IATA seeks a filing exemption are generally among those which have been approved consistently in the past by the CAB and DOT; which have not presented consumer protection, competitive or other problems under aviation regulations and policy; and which have been identified by IATA as not raising legal difficulties under U.S. antitrust laws. We are aware of no changed circumstances which might affect these conclusions now or in the future. It is our judgment that the antitrust laws are a sufficient protection against abuse of the discussion authority which DOT has continued to give to the services conferences with regard to the subject matter of these agreements.

The operation of the exemption will be in the manner requested by IATA, as noted above in connection with Docket OST-2001-9583. Upon service of this order, the 37 listed resolutions and recommended practices will no longer have to be filed for review. Of these, 24 will continue to have immunity until future amendments are declared effective by IATA. As noted, the other 13, listed in Docket OST-2001-9583 for information, are considered amended under this exemption and thus have no antitrust immunity.

Underlying our willingness to undertake this exemption procedure are several necessary understandings, which are consistent with IATA's application. First, the exemption covers only the specific resolutions and recommended practices identified in the application, and their present subject matter. The substantive content in them has remained consistent, notwithstanding occasional textual changes. However, if resolutions are combined, or changed significantly in terms of subject matter, the Department must have sufficient information to be able to determine whether they continue to fall under the exemption.⁷ The Department will monitor the exemption procedure to assure that it is working as intended.

⁶ Order 98-6-6, served June 5, 1998. Antitrust immunity was terminated after 18 months, in December, 1999.

⁷ IATA should assign new identification numbers to new, significantly changed, or consolidated resolutions and recommended practices, and either file an amended exemption application for them or file them for specific approval and immunity.

Second, the Department believes that there must be an effective yet efficient method for the Department and the public to know whether resolutions covered by the exemption have been amended, and thus have no antitrust immunity. IATA has stated that it intends to file a second and third tranche of PSC resolutions and recommended practices for exemption. If such applications for exemption are approved, the DOT public docket will identify for interested parties which resolutions/recommended practices will no longer be reviewed. At the same time, IATA will continue to file all new resolutions/recommended practices in a DOT public docket, for prior review and approval in the case of those agreements not exempted, and "for information," in the case of those agreements that have been exempted.⁸ IATA has indicated that it will not be a burden to identify separately in its application all exempted resolutions whose changes are filed only "for information," including past or projected effective dates, as it has done in Docket OST-2001-9583. This methodology will provide notice to the Department and the public of any changes to exempted resolutions, which no longer have immunity. Like other applicants, IATA files its agreements electronically in our public dockets, and these are available via the internet.

ACCORDINGLY,

1. Consistent with this order and the understandings expressed in it, we grant the application of the International Air Transport Association filed in this docket for an exemption from condition #2 imposed on IATA's Procedures for the Conduct of the IATA Traffic Conferences, Agreement 1175, as amended, by Order 68-7-55, to the extent that IATA need not file the Passenger Services Conference resolutions and recommended practices identified in Appendix A to this order for review and approval by the Department prior to a declaration of effectiveness by IATA and implementation by IATA members;
2. Agreements exempted under paragraph 1 will retain any existing antitrust immunity, subject to conditions imposed, until they are amended or modified and declared effective;

⁸ IATA files with the Department the same complete package of text amendments, revalidations or other changes to agreements, as well as minutes of the meetings, that are sent to the carrier members from Geneva.

3. This exemption may be revoked in whole or in part, at any time; and
4. This order will be served on the International Air Transport Association and published in the Federal Register.

By:

Read C. Van De Water
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web
http://dms.dot.gov/reports/reports_aviation.asp*

Docket OST-01-9575**Resolutions and Recommended Practices****Descriptions**

720b	Carbonised Traffic Documents Technical Specifications
721	Billing and Settlement Plan Passenger Ticket and Baggage Check – Technical Specifications
721a	Billing and Settlement Plan Canada (Use of Traffic Documents)
722a	Off Premise Transitional Automated Ticket (OPTAT)
722e	Automated Ticket/Boarding Pass (ATB) and Multiple Purpose Document (MPD) – Coupon-by Coupon Technical Specification
726	Multiple Purpose Document (MPD)
726a	Multiple Purpose Document (MPD)- Carrier, Carbonised, Automated
726b	Multiple Purpose Document (MPD)- Neutral, Carbonised, Automated
726e	Multiple Purpose Document (MPD)- Neutral, Carbonised, Manual
726f	Multiple Purpose Document (MPD)- Carrier, Carbonised, Manual
730	Security Features for Accountable Passenger Traffic Documents
734a	Automated Tour Order – Neutral (Coupon-by-Coupon)
738	Agents Refund Voucher

Docket OST-01-9575**Resolutions and Recommended Practices****Descriptions**

738a	Automated Agents Refund Voucher (ARV) – Neutral (Coupon-by Coupon)
739	Baggage Security Control
740	Form of Interline Baggage Tag
741	Passenger Name and Address Label
742	Excess Baggage Ticket- Technical Specifications
742b	Interchange of On-line Excess Baggage Ticket
742c	Government Excess Baggage Authorization (GEBA) Form
742d	United States Government Excess Baggage Authorisation/Ticket (GEBAT)
743	Found and Unclaimed Checked Baggage
743a	Forwarding Mishandled Baggage
743b	Baggage Identification Chart
746	Pooling of Baggage
760	Resolution Governing Use of Reservations Interline Message Procedures – Passenger
760a	Changes to Reservations Interline Message Procedures – Passenger (AITIMP)
782	Means of Payment

Docket OST-01-9575**Resolutions and Recommended Practices****Descriptions**

783	Passenger and Airport Data Interchange Standards Board
1707	Standard Symbols for Description of Standard Message Formats
1707a	Data Field Dictionary for DCS Passenger Messages
1707b	Data Element Dictionary for DCS Passenger Messages
1719	Passenger Final Sales (Post- Departure Reconciliation) Message (PFS)
1719a	Frequent Traveler List (FTL) Message
1719c	Electronic Ticket List Message (ETL)
1723	Standard ATB Boarding Pass Wallet
1743e	Baggage Irregularity Report